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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Klaus Unsicker, Jens Pohl, Michael Paulista and Rolf Bechtold

Application No.: 09/527,275 Group: 1646

Filed: March 17, 2000 Examiner: Olga N. Chernyshev

Confirmation No.: 3131

For: CYTOKINES HAVING NEUROTROPHIC ACTIVITY

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INVERVIEW SUMMARY RECORD

Assistant Commissioner for Patents
 P.O. Box 2327
 Arlington, VA 22202

Sir:

In response to the Official Communication mailed from the United States Patent and Trademark Office on March 28, 2003, requesting Applicants to file a statement of the substance of the interview, Applicants submit their Interview Summary Record as follows:

Participants: Examiner Olga N. Chernyshev
Doreen M. Hogle, Esq.
Vivien J. Tannoch, Ph.D.

Date of Interview: March 27, 2003

Type of Interview: Telephonic

Prior Art Discussed: Goulin *et al.* (J. Neurosci. Res., Feb. 15, 1996)

Claims Discussed: 1, and 57-59

Interview Summary

Claim 1 recites:

“A composition having synergistic neurotrophic activity, comprising at least two cytokines, or functionally active derivatives or parts thereof of said cytokines, wherein at least one of said cytokines is BMP, GDF, TGF- β or GDNF, and wherein if a first cytokine is TGF- β , then a second cytokine is not NT-3, NT-4 or FGF.”

Applicants’ representatives proposed amending Claim 1 to add the limitation:

“and wherein if a first cytokine is GDNF, then a second cytokine is not FGF”

to overcome a rejection of Claims 1, and 57-59 under 35 U.S.C § 102(b) as being anticipated by Goulin *et al.*

Goulin *et al.* teach five compositions, namely (i) NGF + FGF-2; (ii) CNTF + FGF-2; (iii) TGF β 3 + FGF-2; (iv) GDNF + FGF-2; and (v) TGF β 3 + GDNF + FGF-2. The first two compositions of Goulin *et al.* clearly do not anticipate Claim 1 because at least one cytokine of the composition is not BMP, GDF, TGF- β or GDNF. Composition (iii) does not anticipate Claim 1 because of the proviso language of Claim 1 (“wherein if a first cytokine is TGF- β , then a second cytokine is not NT-3, NT-4 or FGF”). The proposed amendment to Claim 1 should overcome the 35 U.S.C § 102(b) rejection as being anticipated by the Goulin *et al.* disclosure of composition (iv). Lastly, composition (v) does not anticipate Claim 1 because of the proviso language, as noted above.

Examiner Chernyshev stated that the proposed amendment would incur a new matter rejection.

Applicants' representatives also proposed amending Claims 57 and 58 to make clear that GDNF and TGF- β are two cytokines. The amendment of Claim 57 was proposed as follows:

"A composition having a synergistic neurotrophic activity, comprising two cytokines, wherein the two cytokines are GDNF and TGF- β , or functionally active derivatives or parts thereof."

The same amendment was proposed for Claim 58. Applicants' representatives further proposed cancelling Claim 59 if the proposed amendments were entered.

Examiner Chernyshev stated that such an amendment would require a new prior art search. Applicants' representatives submitted that this should not be required since the first search should have already searched for these same cytokines. Examiner Chernyshev did not agree.

Applicants' representatives alternatively proposed amending Claims 57 and 58 to recite "consisting of" instead of "comprising" language. Examiner Chernyshev maintained that this would also require a new prior art search.

No agreement was reached with respect to the claims.

Respectfully submitted,

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

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